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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 598.

LOU NATHANSON, PETITIONER,

VS.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

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INDEX

1. Respondent's cases distinguished 2

2. Public Law No. 213, approved Dec. 23, 1943, violates the Fifth Amendment, because:

(a) petitioner's acceptance of the statutory offer constitutes a contract 3-6

(b) contract obligations created by statute can not be impaired or diminished by a later statute 6-7

3. Conclusion 7

CITATIONS

Cases—

Anderson vs. Brand, 303 U. S. 667, 82 L. Ed. 685, 113 A. L. R. 1482 6

Appleby vs. New York, 271 U. S. 364, 70 L. Ed. 992 6

Clark County vs. Woodbury, (C. C. A. 8) 187 Fed. 412 7

Dartmouth College vs. Woodward, 4 Wheat. 518, 4 L. Ed. 629 6

Douglas vs. Kentucky, 168 U. S. 488, 42 L. Ed. 553 6

Duke Power Co. vs. S. Car. Tax Comm., (C. C. A. 4) 81 F. 2d 513, cert. den. 298 U. S. 669, 80 L. Ed. 1319 6

Fletcher vs. Peck, 5 Cranch 87, 3 L. Ed. 162 6

Ford vs. Delta & P. Land Co., 164 U. S. 662, 41 L. Ed. 590 6

Houston & T. C. R. Co. vs. Texas, 170 U. S. 243, 42 L. Ed. 1023 6

Lost Creek School Twp. vs. York, (Ind.) 21 N. E. 2d 58 7

Lynch vs. United States, 292 U. S. 571, 78 L. Ed. 1434 3

Massa vs. Nastri, 125 Conn. 144, 3 Atl. 2d 839 6

New Jersey vs. Yard, 95 U. S. 104, 24 L. Ed. 352 6
New York E. Lines Co. vs. Empire City Sub. Co., 235 U. S. 179, 59 L. Ed. 184, 35 S. Ct. 72, L. R. A. 1918E 374, Ann. Cas. 1915A, 906 6
Pac. Mail S. S. Co. vs. Joliffe, 2 Wall. 450, 17 L. Ed. 805 6
Pennoyer vs. McConnaughy, 140 U. S. 1, 35 L. Ed. 363 6
Russell vs. Sebastian, 233 U. S. 195, 58 L. Ed. 912 6
Worthen vs. Kavanaugh, 295 U. S. 56, 79 L. Ed. 1298, 97 A. L. R. 905 6

Statutes—

False Claims Statutes, R. S. 3490-3493, 31 U. S. C. 231-234 2
Public Law No. 213, 78th Congress, 1st Session, Approved Dec. 23, 1943 ..... 1, 2, 5

Miscellaneous—

12 Am. Juris., Sec. 390 5
12 Am. Juris., Sec 406 5

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 560.

LOU NATHANSON, PETITIONER,

VS.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

The Solicitor General's brief recognizes the futility of contending that the obligation of the statutory contract duly accepted by petitioner and which he actively proceeded to perform, was not impaired by the decision of the Circuit Court of Appeals. The same vice inheres (as to this case and approximately two hundred similar cases pending) in Public Law No. 213, which was enacted about the time the petition for the writ of certiorari was filed.

Not a word is offered in support of its validity, except

the feeble formal statement (p. 14) that no vested right was impaired, because petitioner's rights were inchoate until final judgment was rendered. The cases cited were reviewed and clearly distinguished in the petition for the writ (pp. 17-25). All construe a different type of statute, under which suits were filed in the name of the United States alone, except the Griswold and White cases. The latter relates to a mere statutory privilege, not of a contractual nature. That case is distinguished by the Lynch case, from which we later quote. The Griswold case distinguishes the two types of statutes, and *Marcus* v. *Hess* also recognizes the difference. None of the cases cited, except the Griswold case, apply to *qui tam* actions authorized by the False Claims Statute.

We challenge the statements (pp. 8-15) that the enactment of Public Law No. 213 renders a review of a decision herein of no consequence. That reflects a myopic cloistered vision, insulated from reality, of those charged in behalf of the Nation with the duty of searching the far horizons to guard its best interests. Those duties in the national interests were obscured by the desire for more power for the Justice Department, which actively promoted its enactment.

Because the new statute is urged as a chief reason to oppose the writ, its invalidity in purporting to repudiate and impair lawful statutory obligations contracted by the United States, with the consequent violation of the Fifth Amendment of the Constitution of the United States, emphasizes the necessity for the writ. It has been the uniform historical course for the Court to unreservedly proclaim in the public interests that the Constitution and the Court stand as vigilant guardians of the faith and honor of the United States to deny the right of all De-

partments and officers of the Government to repudiate contractual obligations binding upon the United States.

Millions of citizens, within and without the armed forces of the Nation, cheerfully and patriotically deny themselves comforts to buy bonds to support National Defense and the prosecution of the war against totalitarian powers. They are sustained by and glory in their faith in the integrity and honor of the United States, which they knew as the one nation which has never stooped to repudiation, either in times of war or peace.

It is regrettable that there has been no official visualization beyond the unfortunate scramble for complete departmental power. That immediate objective foreclosed consideration of the grist which unconsciously is supplied for use in the whirling mills of Axis propagandists. One grain of repudiation to feed into his propaganda machine has heretofore been sought in vain by Dr. Goebbels and all of his experts. Shall it now be supplied because well-meaning men have failed to look and see where their path leads?

If there is anything of more transcendent public importance than to maintain the abiding faith of the whole population of the Nation in the integrity of their Government, we cannot conceive what it may be. A single permitted draught of repudiation even to add a cubit of powers to the Justice Department, invites disintegration of a public faith now strong enough to more than merely move mountains.

The Government is in the same relatively indefensible position here as in *Lynch* v. *United States*, 292 U. S. 571, 78 L. Ed. 1434, where it sought to sustain the Economy Act of March 20, 1933, Ch. 3, 48 St. at L. It would be presumptuous and hopeless indeed for the Govern-

ment to challenge the sound morals and law exemplified in the language of the Court in the Lynch case, viz.:

"When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals. That the contracts of war risk insurance were valid when made is not questioned. As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, *the due process clause prohibits the United States from annulling them,* unless, indeed, the action taken falls within the federal police power or some other paramount power.

"The Solicitor General does not suggest either in brief or argument, that there were supervening conditions which authorized Congress to abrogate these contracts in the exercise of the police or any other power. The title of the Act of March 20, 1933, repels any such suggestion. Although popularly known as the Economy Act, it is entitled an 'Act to maintain the credit of the United States.' *Punctilious fulfilment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors.* No doubt there was in March, 1933, great need of economy. In the administration of all government business economy had become urgent because of lessened revenues and the heavy obligations to be issued in the hope of relieving widespread distress. Congress was free to reduce gratuities deemed excessive. *But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States.* To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. 'The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, *it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citi-*

zen.' Sinking Fund Cases, 99 U. S. 700, 719, 25 L. Ed. 496, 501" (Emphasis ours).

The decision of the Circuit Court of Appeals impairing the obligations of petitioner's statutory contract, and Public Law No. 213, equally deny the security guaranteed by the Fifth Amendment of the Constitution of the United States. Both are implicitly and inescapably condemned by the Lynch case.

12 Am. Jur., Sec. 406, is supported by decisions of this court in saying:

> "It has become the established law that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the state within the protection of the clause of the Federal Constitution forbidding impairment of contract obligations; and when such a right has arisen, the repeal of the statute does not affect the right or an action for its enforcement. * * *
>
> "The general principle is established in American jurisprudence that a grant under which rights have vested amounts to a contract and that a subsequent statute attempting to impair or annul such grant is unconstitutional, because it is a law impairing the obligation of contracts."

12 Am. Jur., Sec. 390, is similarly supported where it states:

> "The repeal of a law which constitutes a contract is an impairment of its obligation. The obligation of a contract is impaired by a statute which alters its terms by imposing new conditions or dispensing with conditions, or which adds new duties, releases or lessens any part of the contract obligation, or substantially defeats its own end. A law may be within the

constitutional inhibition against impairment of contract obligations by implication, as well as by expression. It may also be stated that this constitutional provision is considered as rendering void any statute which is retrospective and which destroys a vested right of action arising *ex contractu*."

That the acceptance of a statutory offer constitutes a contract is held in *N. Y. Elec. Lines Co.* v. *Empire City Subway Co.*, 225 U. S. 179, 59 L. Ed. 184, 35 S. Ct. 72, L. R. A. 1918E, 874 Ann. Cas. 1915A, 906; *Russell* v. *Sebastian*, 233 U. S. 195, 58 L. Ed. 912; *Houston & T. C. R. Co.* v. *Texas*, 170 U. S. 243, 42 L. Ed. 1023; *New Jersey* v. *Yard*, 95 U. S. 104, 24 L. Ed. 352; *Pac. Mail S. S. Co.* v. *Joliffe*, 2 Wall. 450, 17 L. Ed. 805; *Ford* v. *Delta & P. Land Co.*, 164 U. S. 662, 41 L. Ed. 590; *Pennoyer* v. *McConnaughy*, 140 U. S. 1, 35 L. Ed. 363; *Douglas* v. *Kentucky*, 168 U. S. 488, 42 L. Ed. 553; *Worthen* v. *Cavanaugh*, 295 U. S. 56, 79 L. Ed. 1298, 97 A. L. R. 905; *Massa* v. *Nastri*, 125 Conn. 144, 3 Atl. 2d 839; *Duke Power Co.* v. *S. Car. Tax Comm.*, (C. C. A. 4) 81 F. 2d 513, cert. denied 298 U. S. 669, 80 L. Ed. 1319.

That a later statute may not impair or annul a statute which, when accepted, constitutes a contract because it impairs contract obligations, is held by *Douglas* v. *Kentucky, supra; Fletcher* v. *Peck*, 6 Cranch 87, 3 L. Ed. 162; *Appleby* v. *New York*, 271 U. S. 364, 70 L. Ed. 992.

Dartmouth College v. *Woodward*, 4 Wheat. 518, 4 L. Ed. 629, rules that when a contract has once passed into an accepted *bona fide* grant, that neither the King nor a private person may recall the grant, even if the conveyance was voluntarily made, and that a grant of franchise is not distinguishable in principle from a grant of any other property.

Anderson v. *Brand*, 303 U. S. 667, 82 L. Ed. 685, 113 A. L. R. 1482, held that the Indiana Teachers Tenure Law created a constitutionally enforceable contract obligation which could not be changed by subsequent statute. See to the same effect, *Clark Co.* v. *Woodbury*, (C. C. A. 8) 187 Fed. 412; *Lost Creek School Twp.* v. *York*, (Ind.) 21 N. E. 2d 58.

Conclusion.

The dynamic force of fundamental principles and rights secured against violation by the Constitution may not be negatived by inferior courts or by the Congress so long as the Constitution and this Court endures.

The inescapable facts and the public interests make it imperative that the Court again proclaim that the dignity of the United States will not permit any repudiation of its contracted obligations.

Respectfully submitted,

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Petitioner,

By J. Francis O'Sullivan,
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